

Bhagwan Singh Vs Union Of India And Others

Court: Armed Forces Tribunal Principal Bench, New Delhi

Date of Decision: Feb. 20, 2020

Acts Referred: Pension Regulations For The Army, 1961 " Regulation 173

Hon'ble Judges: Sunita Gupta, J; Philip Campose, Member (A)

Bench: Division Bench

Advocate: S M Dalal, K.K.Tyag

Final Decision: Disposed Of

Judgement

1. Arguments heard.

Vide separate order. OA stands disposed off,

Having been found medically and physically fit the applicant was enrolled as a Sepoy(Sep) in Jat Regiment on 12.04.1978 and, after serving for over

three years was discharged from service on 26.05.1981_ The applicant was re-enrolled in the DSC on 10.06 1981. While serving with DSC, the

applicant contracted the disease known as 'Depressive Disorder on 11 10 1990 was placed in low medical category CEE (T-24) w.e.f. 18.01.1991 and

was subsequently placed in GEE (Permanent) on 21.05.1991.

2. Consequent to the applicant's sheltered appointment being withdrawn,78subsequently he was brought before Release Medical Board on 04.06.1991.

The Medical Board assessed the disability of the applicant as 30% and opined that the disability was aggravated due to stress and strain of service

The applicant was discharged from service on 30 09 1991 However, the applicant was not granted disability pension hence present OA was filed by

the applicant

3 Factual matrix of the case has not been disputed by the respondents in the counter affidavit.

4. Learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon ble Supreme Court

including Dharamvir Singh Vs. Union of India and Ors. (2013) 7 SCC 31.6 Union of India and Ors Vs Rajvir Singh (2015) 12 SCC 26 4and Union of

India and Ors Vs. Angad Singh Titaria, (2015) 12 SCC 257. Further, the claim of the applicant is also supported by relevant rules. It is further

submitted that although assessment of disability was for two years but since the disability was of permanent nature. hence in view of the Government

of India letter dated 07.02 2001 and latest pronouncement of Hon'ble Supreme Court in Civil Appeal No. 5970 of 2019 in the matter of Commander

Rakesh Pande versus Union of India and others. decided on 28' November 2019. applicant is entitled to disability pension for life.

5. Per contra. learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Release Medical Board

being an Expert Body found the disabilities Neither Attributable to Nor Aggravated by Service It is further submitted that Govt. of India letter dated 07

02.2001 does not help the applicant and reference is made to para 10 of this letter for submitting that applicant is not entitled to the relief claimed.

6. We have heard learned counsel for both sides and perused the records.

7. As per regulation 173 of the Pension Regulation Rules, the primary condition for grant of disability pension is twofold-

(i) The disability should be attributable to or aggravated by military service:

(ii) Assessment of disability should be 20% or more.

8 The disability 'Depressive Disorder was assessed as 30% for 5 years. However, it was opined to be neither attributable to nor aggravated by

service. In this regard we are of the view that the case in hand is squarely covered by the decisions referred to herein above. In Dharamvir Singh's

case (supra) the Hon ble Supreme Court held that any disability sustained during the course of military service will be attributed to service conditions

unless the disability was such that the disease could not have been detected on medical examination before a person is selected for military Service

and furthermore. Before arriving at a conclusion the Release Medical Board should have assigned reasons in writing that the disability was not due to

military service. There is no dispute with regard to the fact that when the applicant entered into service, he was not suffering from any disease and

that the disability in question was detected/sustained only during the course of his military service.

9. In the light of the preceding paragraph and essential parameters aforesaid, we are of the view that even for this disability, the applicant is entitled

for disability element of pension @ 30%. as such. the applicant is entitled for the same.

10. Duration of the disability was opined to be five years. As stated above, counsel for the applicant had placed reliance upon Govt. of India letter

dated 7.2.2001 and the latest pronouncement of Honble Supreme Court in Rakesh Pande s case (supra). counsel for the respondents has submitted

that as per para 10 of the Govt of India letter dated 7 2 2001. following conditions are pre-requisite:-

(i) The provision of this letter will be applicable to service personnel who were in service on or after 01 01 1996,

(ii) The cases which have been finalised prior to issue of this letter will not be reopened.

(iii) As regards pre 01.01 1996. disability pensioners, the assessment made by the Reassessment Medical Board will be considered as final

and for life.

11. It was submitted that it is only if the assessment is made by Reassessment Medical Board that the disability, if found to be permanent, will be

treated as final for life. This submission however, is devoid of merit as in Rakesh Pande's case also. the disability was assessed for five years by the

Release Medical Board and since the same was permanent. therefore. it was considered for life.

12. In the instant case also, the perusal of the Release Medical Board, wherein it is mentioned 'Fit to be released out of service in Med. Cat. GEE 1-

24 w.e f 18.01.1991 and was subsequently placed in CEE (Permanent) w.e.f 21 05 1991. therefore. the applicant is entitled to the benefit of disability

element of pension for life.

13. In view of the discussion made above. OA is allowed. Applicant is granted disability element of pension @ 30% which be rounded upto 50% for

life.

14. In view of the fact that there is delay on the part of the applicant in approaching the Tribunal arrears are restricted to three years prior to the filing

of the OA. which was filed on 27.07 2017.

15. The respondents are directed to release the arrears within a period of 4 months from the date of receipt of a copy of this order, failing which the

arrears shall carry interest at the rate of 6 per cent per annum.

16. The O.A. stands disposed of in the above terms with no order as to costs.